

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
MIDLAND/ODESSA DIVISION

FILED

NOV 4 2010

GINGER BRIGHT COREY and  
HOUSTON BRIGHT,

Plaintiffs,  
v.

JOHN COOPER, JOE DON  
GEORGE, in His Capacity as  
substitute Executor of the ESTATE  
OF LONNIE RAY COOPER, and BP  
AMERICA, INC.

Defendants.

CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY \_\_\_\_\_ DEPUTY CLERK

CIVIL ACTION NO. MO-10-CV 134

NOTICE OF REMOVAL

Defendants/Counter-Plaintiffs John Cooper and Carrie Boe respectfully petition this Court for removal of the above-entitled action to the United States District Court for the Western District of Texas, Midland-Odessa Division, from the County Court of Ector County, Texas and for its Notice of Removal states:

1. On November 10, 2009, Plaintiffs Ginger Bright Corey and Houston Bright commenced an action in the County Court of Ector County, Texas, entitled *The Estate of Cindy Jennings Cooper, Deceased; Cause No. 19955-09* (the "Litigation"). Defendant BP America, Inc., ("BP") was added to the Litigation in Plaintiffs' Third Amended Petition. Defendants/Counter-Plaintiffs John Cooper and Carrie Boe file this Notice of Removal within 30 days after receiving the Plaintiffs' Third Amended Petition.

2. Pursuant to 28 U.S.C. §1446(a), an index of all documents filed previously in the Litigation is attached hereto as Exhibit "A", a certified copy of the Litigation's state court docket

sheets and copies of each document filed in the entirety of the Litigation are attached as Exhibit "B". Defendant/Cross-Plaintiffs John Cooper and Carrie Boe's Certificate of Interested Parties is attached as Exhibit "C".

3. The Litigation centers on the recovery of benefits governed by the Employee Retirement Income Security Act ("ERISA"), *as amended*, 29 U.S.C. §1001, *et seq.*, the enforcement of rights under ERISA, and the clarification of the parties' rights in certain ERISA governed plans. Lonnie Ray Cooper, deceased, was an employee of BP Corporation North America, Inc. ("BP") and as an employee, a participant in the BP Retirement Accumulation Plan ("BP RAP"), the BP Employee Savings Plan ("BP ESP"), the BP Capital Accumulation Plan ("BP CAP"), all of which are employee benefit plans (collectively the "BP Plans") regulated by ERISA. Upon information and belief, the benefits of the Plans total approximately THREE HUNDRED AND EIGHTY SEVEN THOUSAND AND ONE DOLLARS AND NO./100 (\$387,000.00). BP must administer claims to these Plans in accordance with ERISA and the documents and instruments governing the Plans. Lonnie Ray Cooper and Cindy Cooper both died on November 5, 2009. Cindy Cooper is considered to have pre-deceased Lonnie Ray Cooper under the terms of the Plans. John Cooper and Carrie Boe are the proper and legal beneficiaries pursuant to ERISA and the documents and instruments governing the Plans. The respective interests of John Cooper and Carrie Boe have now since vested in the Plans. BP has a valid contractual obligation to distribute the proceeds and benefits of the Plans to John Cooper and Carrie Boe pursuant to ERISA and the documents and instruments governing the Plans.

4. This Court has jurisdiction over the issues presented in Plaintiffs' Third Amended Petition pursuant to 28 U.S.C. §1331 because the BP Plans and Plaintiffs' claims against BP, in addition to the parties' claims in connection with the insurance policy proceeds (approximately

\$413,927.11) currently located in the registry of this Honorable Court, are governed by ERISA and therefore such claims arise under the laws of the United States. Accordingly, the entirety of the Litigation is removable pursuant to 28 U.S.C. §1441(a) and (c). Venue is proper because the state court where the suit is pending is located in this district.

5. An action involving a claim for benefits under an ERISA plan is removable under 28 U.S.C. §1441(a) and (c) as an action arising under federal law even when the ERISA-related nature of the claim does not appear on the face of the pleadings. *Metropolitan Life Insurance Co. v. Taylor*, 481 U.S. 58-62 (1987). The claims against BP and the proceeds presently in this Court's registry arise out of employee benefit plans and seek determination of the appropriate payees of the benefits of such BP Plans.

6. Thirty (30) days have not elapsed since the filing of the Plaintiffs' Third Amended Petition which added BP and asserted claims for the first time seeking a determination of beneficiaries entitled to the payment of benefits under the Plans governed by ERISA.

7. Plaintiffs have made a jury demand. The address of the courthouse for Ector County, Texas is 300 N. Grant, Odessa, Texas 79761.

8. Written notice of the filing of this Notice of Removal will be given to the parties as required by law. The consent of each other named defendant in Plaintiffs' Third Amended Petition has been granted for the removal of the Litigation as shown in Exhibit "D" which is attached hereto and incorporated herein for all purposes.

9. A true and correct copy of this Notice of Removal will be promptly filed with the County Clerk of Ector County, Texas, as provided by law.

WHEREFORE, Defendants/Counter-Plaintiffs John Cooper and Carrie Boe respectfully pray that the above-entitled action now pending in the County Court of Ector County, Texas, be removed to this Court.

Respectfully Submitted,

/s/  
Terry W. Rhoads  
(SBN: 16811750), Lead Attorney  
and  
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ATTORNEYS FOR JOHN COOPER AND  
CARRIE BOE

**CERTIFICATE OF SERVICE**

I hereby certify that on this the 4<sup>th</sup> day of November, 2010, a copy of the above and foregoing instrument was forwarded by ECF notification, certified mail return receipt requested, and/or facsimile:

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